



(By E-mail/Courier)

November 15, 2016

Principal Advisor/Advisor

Telecom Regulatory Authority of India

Mahanagar Doorsanchar Bhawan

Jawaharlal Nehru Marg,

New Delhi-110002

Sub: Draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016 & Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016

Kind Attn: Shri SK Gupta/Shri Sunil Kumar Singhal

Dear Sir,

At the outset we appreciate the opportunity given by the authority to provide our comments on the Draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016 & Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016. In this context we wish to make the following submissions with respect to few issues/provisions mentioned in the same.

We are enclosing our views/recommendations/submissions /suggestions in this respect for your reference and records and it may be noted that the above views/recommendations/submissions /suggestions have been made by us without prejudice to our legal rights and contentions with regard to jurisdiction and other legal issues and we have reserve our right to modify our response at any time.

Thanking You,

For NEO Sports Broadcast Pvt. Limited

Akanksha Sharma

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(Assistant Manager-Legal & Regulatory Affairs)



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RESPONSE OF NEO SPORTS BROADCAST PRIVATE LIMITED

ON

TRAI CONSULTATION PAPERS

ON

DRAFT TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) (EIGHTH) (ADDRESSABLE SYSTEMS) TARIFF ORDER, 2016

AND

DRAFT TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (ADDRESSABLE SYSTEMS) REGULATIONS, 2016

I. General Provisions Relating to Interconnection

1. In the light of the Draft Tariff Order, 2016 and the Draft Interconnection Regulations, 2016, how will the 'Niche Channels' be defined?

Neo's Comments: Paragraphs 28, 66, 67 and 68 in the Explanatory Statement of the Draft Tariff Order, 2016 bring to light the concept of Niche Channels and the challenges they face by their Regulator commendably. The Regulator, despite understanding the issue has not been able to completely lay down a policy or a regulatory framework that will provide them due opportunities to grow and innovate in the industry, an important pre-requisite to a more wholesome and varied entertainment in the industry.

The regulator has assumed that a premium channel and niche channel are synonymous and having similar business models, hence price forbearance alone justifies the reason for success of niche channels. However, in reality, niche channel may not necessarily be a premium channel. Despite the small subscriber base, they may still be willing to subject themselves to price tariff regulations. Hence the challenge will be compounded by many times if they are offering in a market of very small base where the content, despite its attractiveness may not command the pull available to premium channel. It is also true that such innovative channels (and content) are usually a disruptive business model introduced by business investors with extremely limited wherewithal and financial power to compete against the dominant/ more powerful companies, a percentage of whose base they are trying to take away. Hence, in such a scenario it is the most predictable outcome that they are likely to not live for long enough to fight the onslaught of two major forces i.e. large broadcasters trying to kill them because of the financial marketing power on one hand and on the other hand, the DPOs trying to extract the maximum carriage, knowing their market size and their limited ability to withstand in the market.

Hence it is critical that we bring out a clear distinction in the regulatory framework for the niche channels willing to agree to a price tariff and any channel wanting to become a premium channel i.e. not adhere to price tariff. It is also apt that in the evolving landscape of channels in the future, it is the niche channels, in any of the genres that will grow and will take away space from the mainstream mass based channels because of the digital opportunities. Here it is only correct to say that digital opportunities are directly proportional to the creation of the niche market.

In this context we see that niche channels typically operate in a market size which is significantly lower than 20%. Hence the current regulation will always subject them to the inherent disadvantage of carriage clause and the removal clause, which would be unfair, since they will be forced to evaluate the performance against the market size which is not even relevant to them.

In view of the above, we request the regulator to assess the seriousness to address the issue that is likely to affect these niche channels.

Hence our recommendations are as follows for ensuring the growth of niche channels:

1. There has to be a clearly delineated framework for niche channels per se that objectively and empirically create such positive environment for niche channels.
2. Our definition of niche channel will be any channel which declares itself to be niche and whose market size will never exceed 25% of the genre in which they are willing to operate or if the genre is absent, maximum 10% of the total market size.

3. Since many niche channels, as a matter of experience, create markets that cannot be defined geographically i.e. they use non-geographical parameters like age, psychographics, interests, interest groups etc. hence for all niche channels, their declared relevant market should also include such non- geographical parameters to be assessed against or else they will be at a huge disadvantage should they use only geographical parameter which is not even relevant to them.
4. Also the removal of such niche channels should be subject to 5% of the genre in which they are operating and not the entire market. It is a given fact that channels selling on a-la-carte have very low response, hence, all such channels being sold in a-la-carte should be subject to a percentage of the overall a-la-carte responses (average of all genres selling in a-la-carte) and not the entire market per se since they are two extremely varied business models and cannot be compared. Even premium channels should be subject to such evaluations for their removal.

2. What will be the parameters for newly introduced channels in relation to their inclusion/exclusion in a specific genre/ bouquet of channels?

Neo's Comments: We suggest the creation of another category called New Channels. The idea behind this category is to consciously foster creation and generation of new ideas that will result in representation of more varied entertainment forms to make the industry growth healthier and sustain the pace of growth.

Channels with many new untested ideas may be unfairly placed during their negotiations for interconnection agreements since they will definitely not subscribe to the list of parameters defined by DPOs for selecting channels. They will have none of the conventional evaluation criteria like TRP, reach, GRP etc which will be relevant to them in that point in time. Hence it is important that the Regulator frames specific policies to give impetus to creative content creation by making it mandatory that a certain percentage of their bandwidth being made available on every DPO platforms. New channels are the edifice on which the industry in future is likely to grow. Hence it is critical that the flow of such ideas is nurtured by creating a policy framework that allows for fair, transparent, objective and an empirical functioning of the DPOs in dealing with them.

In the event of the above, the two important considerations i.e. dealing with niche channels and new channels are overlooked. The ability to create value for the industry will be substantially retarded and most probably remain stagnant with existing player's thoughts and ideas which continue to dominate and hence, in the process, lose the very essence of digitization.

3. How will transparency be assured in case of the principle of 'First Come First Serve' basis, introduced in the Draft Regulations, 2016?

Neo's Comments: In our opinion, 'First Come First Serve' principle is contradictory as it gives DPO the authority to pick and chose the requests made by the Broadcasters by simply assigning the reasons for not carrying it from the list of several points that the DPO may have listed on its website.

For Example: If a niche channel has applied first and a GEC which has a huge mass base is selected despite being (say) third, based on the criteria of the DPO, how does first come first serve come into play?

Hence a regulator needs to overcome this anomaly/ dichotomy which will only result in greater carriage deals because of subjective and discretionary element being made available to the DPO, defeating the very principle of fairness and transparency.

Hence, in view of the above, we recommend that the DPOs must publish the inclusion principle based on following additional steps, while evaluating the new channels for inclusion:

1. Ranking or genre priority
2. Range within which they are likely to pick channels in any genre
3. The priority for picking channels in every genre.

4. How would the interests of the Broadcaster, aggrieved by the discontinuation/removal of channel by a Distributor be secured?

Neo's Comments: This principle should apply equally to both i.e. the Broadcaster as well as the DPO. It means that if a broadcaster has been rejected by a DPO, it has as much right not to provide service to the platform that has rejected it for a specified lock in period. Hence if a DPO has rejected a broadcaster, then Broadcaster is not obliged to provide him the channel under 'must provide' clause. This is because the DPOs rejection has a huge cascading effect on the business of the broadcaster. Hence they have as much right to protect their business and must not be subject to whims and fancies of the DPO's chose and throw policy.

We further suggest that the period for which the broadcaster and the DPO uses the right under the must provide and carry clauses, once rejected by either of them respectively should be 3 years for non-sports genre and minimum 5 years for sports content genre.

It is critical that either party does not uses this tool as an arm twisting tool and engage in frequent pick and drop which will be prejudicial to the functioning of the industry. We have strong reason to believe that a decision as extreme as removal is a decision which is well thought out rationally by either parties after having given due consideration to their long/ mid range business plans and impact and is not an outcome of irrational and non-commercial negotiating parameters. Hence to make sure that this principle of lock in to be taken seriously and it be seen as an important deterrent in making hasty decisions, 3 years and 5 years lock in has been suggested.

II. Reference Interconnection Offer

5. Distribution Fees and Discounts:

We recommend the Distribution Fees to be reduced to maximum of 15% and the discount on MRP be increased to a maximum of 20%, without altering/ breaching the cap of 35%. We have the following reason for our suggestions:

Since distribution fees is simply an administrative expense that does not involve substantial effort separately for each channel individually and all other operations are common and are carried almost simultaneously for all the channels , there is no rationale for such high distribution fees. Whereas selling a channel involves an added effort specifically targeted for each channel, hence it is only correct that the DPOs be rewarded for a tangible effort that they have undertaken in promoting each such channel. In

the event, the incentive for sales is less and they are rewarded only for administrative expenses, their motivation for sales will be adversely affected, nullifying the very rationale of a 'Sales' Model, which is a practice adopted by industries across various categories.

6. Time Period for addressing the objections to the Draft RIO and submission/ publication of Final RIO: Regulation 5(5) of the Draft Interconnection Regulations stipulates a time period of 30 days for raising of objections by the Distributors on the Draft RIO published by the Broadcaster. However, no time frame has been provided for resolution/ addressing of such objections and finalization of the RIO.

Recommendation: To set a time frame for resolution/ addressing of such objections and finalization of the RIO.

7. Clarification on Regulation 6 – Publication of RIO by Distributor: Regulation 6 read with the subsequent proviso, states that every distributor shall publish a draft RIO on its website within 30 days of the commencement of these Regulations or before starting a distribution network provided that such RIO shall apply only in cases where a Broadcaster requests a Distributor of TV channels to carry the Broadcaster's channel on its platform.

On a plain reading of the Regulation, it appears that there will be two simultaneous RIOs that will be in existence between the Broadcaster and the Distributor, where one will be applicable in case the Distributor approaches the Broadcaster and the other will be applicable when the Broadcaster approaches the Distributor. Please clarify.